

## § 243.11

(b) MMS may initiate collection against the bond or other surety instrument or the person demonstrating financial solvency:

(1) If the MMS Director or the Deputy Commissioner of Indian Affairs decides your appeal adversely to you and you do not pay the amount due or appeal that decision to the IBLA under 43 CFR part 4, subpart E;

(2) If the IBLA, the Director of the Office of Hearings and Appeals, an Assistant Secretary, or the Secretary decides your appeal adversely to you, and you do not pay the amount due or pursue judicial review within 90 days of the decision;

(3) If a court of competent jurisdiction issues a final non-appealable decision adverse to you, and you do not pay the amount due within 30 days of the decision;

(4) If you do not increase the amount of your bond or other surety instrument as required under § 243.101(b), or otherwise fail to maintain an adequate surety instrument in effect, and you do not pay the amount due under the order within 30 days of notice from MMS under § 243.101(b);

(5) If the obligation to comply with an order or decision is not suspended under § 243.8 or § 243.9 and you do not pay the amount required under the order or decision; or

(6) If the MMS bond-approving officer determines that you are no longer financially solvent under § 243.202(c), and you do not pay the order amount or post a bond or other MMS-specified surety instrument under subpart B within 30 days of that determination.

### **§ 243.11 May I appeal the MMS bond-approving officer's determination of my surety amount or financial solvency?**

Any decision on your surety amount under subpart B or your financial solvency under subpart C is final and is not subject to appeal.

### **§ 243.12 May I substitute a demonstration of financial solvency for a bond posted before the effective date of this rule?**

If you appealed an order before June 14, 1999 and you submitted an MMS-specified surety instrument to suspend compliance with that order, you may

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replace the surety with a demonstration of financial solvency under this part at an administratively convenient time, such as when the surety instrument is due for renewal.

## **Subpart B--Bonding Requirements**

### **§ 243.100 What standards must my MMS-specified surety instrument meet?**

(a) An MMS-specified surety instrument must be in a form specified in MMS instructions. MMS will give you written information and standard forms for MMS-specified surety instrument requirements.

(b) MMS will use a bank-rating service to determine whether a financial institution has an acceptable rating to provide a surety instrument adequate to indemnify the lessor from loss or damage.

(1) Administrative appeal bonds must be issued by a qualified surety company which the Department of the Treasury has approved.

(2) Irrevocable letters of credit or certificates of deposit must be from a financial institution acceptable to MMS with a minimum 1-year period of coverage subject to automatic renewal up to 5 years.

### **§ 243.101 How will MMS determine the amount of my bond or other surety instrument?**

(a) The MMS bond-approving officer may approve your surety if he or she determines that the amount is adequate to guarantee payment. The amount of your surety may vary depending on the form of the surety and how long the surety is effective.

(1) The amount of the MMS-specified surety instrument must include the principal amount owed under the order plus any accrued interest we determine is owed plus projected interest for a 1-year period.

(2) Treasury book-entry bond or note amounts must be equal to at least 120 percent of the required surety amount.

(b) If your appeal is not decided within 1 year from the filing date, you must increase the surety amount to cover additional estimated interest for another 1-year period. You must continue to do this annually on the date your